

Appl. No. 09/778,375
Atty. Docket No. 8414Q
Amdt. dated October 19, 2004
Reply to Office Action of July 19, 2004
Customer No. 27752

REMARKS

Claims 1 – 16 are pending in the present application. Claims 6, and 14-16 have been objected to. Claims 1-2, 10-11, and 14-16 have been rejected under 35 U.S.C. § 102. Claims 1-8 have been rejected under 35 U.S.C. § 103. Claims 9, 12 and 13 have been indicated as allowable but objected to as depending from a rejected base claim. Claim 1 has been amended by this amendment. Claims 2-9 have been canceled without prejudice.

Objections to the Claims

Claims 6 and 14-16 have been objected to for the use of the term “effects” when “affect” should be used. Claim 6 has been canceled. The objection is respectfully traversed with respect to claims 14-16. The term “effect” or “effects” in these claims is used a verb in the sense of the word, (meaning to create) and it respectfully submitted that these claims are grammatically correct in their current form

Rejection Under 35 USC 102 Over Robinson (WO 98/31402)

Claims 1-2 have been rejected under 35 U.S.C. § 102 as anticipated by Robinson. Amended Claim 1 is not anticipated by Robinson, and this rejection should be withdrawn. Amended Claim 1 has been amended to incorporate the elements of prior claim 9 (indicated in the Office Action as allowable), which Robinson clearly does not teach. Even if Robinson were construed to teach or disclose all of the limitations of Claim 1 as previously presented (which is expressly not conceded or acquiesced to), Robinson clearly does not teach that the phase change material is used at a basis weight of at least about 100 gsm or the advantages disclosed in the specification associated with such levels of this material. As these features are not taught or disclosed in Robinson, it cannot anticipate Amended Claim 1 is therefore, patentable over the Robinson reference. Claim 2 has been canceled rendering this rejection moot.

Rejection under 35 U.S.C. § 102 over Hasse (US 5,591,146)

Claims 1, 10-11 and 14-16 have been rejected under 35 U.S.C. 102 as anticipated by Hasse. As the Hasse patent does not teach or disclose each and every element of any of these claims, these rejections should be withdrawn.

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Claim 1

The Office Action cites element 89 as the claimed phase change material. A closer reading of the Hasse patent reveals that this disclosure merely reveals an adhesive with micro-encapsulated fragrance particles. Even if this disclosure met the requirements of the claimed phase change material, it certainly does not meet the requirements of Amended Claim 1 that the phase change be used at a basis weight of at least about 100 gsm. Therefore, the Hasse patent does not disclose each and every element of Amended Claim 1 and does not anticipate the claim. Therefore, this rejection should be withdrawn.

Claims 14-15

Claims 14-15 depend from Amended Claim 1 and are not anticipated by the Hasse patent for at least the reasons given above with respect to Amended Claim 1. Therefore, these rejections should be withdrawn.

Claim 16

The Office Action cites elements 95 and 96 of the Hasse patent and column 11, lines 5-26 as supposedly teaching the claim requirement of a thermal cell actuator. A closer reading of the Hasse patent, however, reveals that this disclosure does not teach or disclose at least this element of Claim 16. Elements 95 and 96 are merely micro-encapsulated fragrance beads which may be broken upon manipulation of the sanitary napkin or removal of the adhesive release paper. Column 11, lines 5-26 as cited in the Office Action clearly only disclose a micro-encapsulation of a fragrance or perfume and not the claimed thermal cell actuator. Other portions of the Hasse patent are also cited in the Office Action, but these merely reference the adhesive system or encapsulated fragrance. The Office Action does not demonstrate how this disclosure of a conventional micro-encapsulated fragrance meets the limitations of the claimed thermal cell actuator. As the disclosure of Hasse does not meet this claim limitation, it cannot anticipate Claim 16 and this rejection should be withdrawn.

Claims 10-11

Claims 10-11 depend from Claim 16 and are not anticipated by the Hasse patent for at least the same reasons given above with respect to Claim 16. Therefore, these rejections should be withdrawn.

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Rejection Under 35 U.S.C. § 103 Over Stewart (US 5,156,911)

Claims 1-8 have been rejected under 35 USC 103(a) as being unpatentable over Stewart. Claim 1 has been amended to incorporate the limitations of previous Claim 9. As such, Amended Claim 1 should be allowable given the indication that Claim 9 was allowable in the Office Action.

Claims 2-8 have been canceled by this amendment rendering these rejections moot.

Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejections made in the Office Action. Early and favorable action in the case is respectfully requested.

No new matter has been added by this amendment.

Issuance of a Notice of Allowance at an early date is respectfully requested.

Respectfully submitted,

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